

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**LISA K MARION**  
Claimant

**APPEAL NO. 08A-UI-02435-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WINNEBAGO INDUSTRIES**  
Employer

**OC: 12/23/07 R: 02  
Claimant: Appellant (2)**

Section 96.5-2-a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Lisa Marion filed an appeal from a representative's decision dated March 3, 2008, reference 01, which denied benefits based upon her separation from Winnebago Industries. After due notice was issued, a hearing was held by telephone on April 2, 2008. Ms. Marion participated personally. Participating on her behalf was her attorney, Mr. Kevin J. Kennedy. The employer participated by Ms. Dee Pearce, Human Resources Supervisor and Mr. Michael Prehn, Supervisor. Exhibits One, Two and Three were received into evidence.

**ISSUE:**

The issue in this matter is whether the claimant was discharged for misconduct in connection with her work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all the evidence in the record, finds: The claimant worked for this employer from August 5, 2002 until February 7, 2008 when she was discharged from employment for fighting on the job. Ms. Marion worked as a full-time general assembler and was paid by the hour. Her immediate supervisor was Michael Prehn.

Ms. Marion was discharged when the employer believed that she was the aggressor in a physical confrontation that resulted between the claimant and another female worker on February 4, 2008. On that date the other worker, who had repeatedly accosted and challenged the claimant, had once again done so by blowing dirt from her work area into Ms. Marion's work area. The claimant reciprocated resulting in the other female worker physically making contact with Ms. Marion. The claimant who felt physically threatened took the other worker "to the ground" and restrained her until a supervisor arrived. The employer was aware that the other female employee had repeatedly bumped, pushed and threatened the claimant on numerous occasions. Ms. Marion had made two specific requests to be transferred to a different work area in order to avoid contact with the other worker, however, the employer had not transferred the claimant. Most recently, during a review in December 2007, the claimant had been

specifically promised that she would be transferred to a different work area to remove herself from the other worker's proximity. The claimant was promised that the move would take place in January, however, it did not occur.

### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence establishes intentional disqualifying misconduct on the part of the claimant at the time of separation. It does not. In this case the evidence establishes that Ms. Marion, the claimant, had been the constant recipient of threatening and aggressive behavior on the part of another female worker and had requested a transfer to another work area. The employer, however, had not transferred the claimant to other work and had not taken sufficient disciplinary action against the other worker to eliminate the constant harassment and threatening behavior towards the claimant. Although the employer was aware of the constant conduct on the part of the other worker that the claimant complained of, the parties nevertheless were required to work next to each other on both sides of a production line. Although the claimant had repeatedly alleged that the other worker had engaged in pushing, shoving and attempting to drive her vehicle in a threatening manner near the claimant, the other employee continued in this conduct culminating in the incident on February 4, 2008. On that date the claimant responded to the other worker's childish behavior by blowing dirt back into the other worker's area in response to that person's conduct towards the claimant. Subsequently the claimant was physically accosted and acted solely to defend herself by taking the other worker "to the ground" and merely restraining her until supervisory personnel arrived. Although the claimant was aware of the company's policy which prohibited violence in the workplace, Ms. Marion believed at that time that it was necessary to take protective action based upon the other employee's aggressive behavior and physical contact.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
  - a. The individual shall be disqualified for benefits until the individual has worked in and has been paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.32(1)a provides:

Discharge for misconduct.

(1) Definition.

- a. "Misconduct" is defined as a deliberate act or omission by a worker which constitutes a material breach of the duties and obligations arising out of such worker's contract of employment. Misconduct as the term is used in the disqualification provision as being limited to conduct evincing such willful or wanton disregard of an employer's interest as is found in deliberate violation or disregard of standards of behavior which the employer has the right to expect of employees, or in carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's

duties and obligations to the employer. On the other hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed misconduct within the meaning of the statute.

The question before the administrative law judge is not whether the employer has a right to discharge an employee for these reasons but whether the discharge was disqualifying under the provisions of the Iowa Employment Security Law. While the decision to terminate Ms. Marion may have been a sound decision from a management viewpoint, the administrative law judge concludes based upon the totality of the evidence in the record that the claimant did not engage in intentional disqualifying misconduct but was acting more in the nature of self defense. The proximity of the parties working together exacerbated the situation and the employer in the past had the opportunity to transfer the claimant to other work based upon her repeated complaints of harassment by the other female worker. For these reasons the administrative law judge concludes that the claimant was not discharged for intentional disqualifying misconduct at the time of termination.

**DECISION:**

The representative's decision dated March 3, 2008, reference 01, is hereby reversed. The claimant was discharged under nondisqualifying conditions. Unemployment insurance benefits are allowed, provided the claimant meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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